

# **REVIEW OF STANDARDS FOR DETACHMENT FROM AN ORGANIZED BOROUGH AND INCORPORATION OF A NEW BOROUGH**

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# **REVIEW OF STANDARDS FOR DETACHMENT FROM AN ORGANIZED BOROUGH AND INCORPORATION OF A NEW BOROUGH**

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Alaska Department of Community and Economic Development  
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## **I. INTRODUCTION**

The fate of every municipal boundary proposal, including a borough detachment petition and borough incorporation petition, rests on whether it satisfies standards formally established in Alaska's Constitution, State statutes, and regulations of the Local Boundary Commission (hereinafter "the Commission" or "LBC").

State law permits a borough detachment petition to be granted only if it

1. meets applicable standards under Alaska's Constitution;
2. meets applicable standards under regulations adopted by the Commission; and
3. is in the best interests of the state.

If those standards are not met, the detachment petition must be denied. Specifically, AS 29.06.040(a) states as follows:

The Local Boundary Commission may consider any proposed municipal boundary change. The commission may amend the proposed change and may impose conditions on the proposed change. If the commission determines that the proposed change, as amended or conditioned if appropriate, meets applicable standards under the state constitution and commission regulations and is in the best interests of the state, it may accept the proposed change. Otherwise it shall reject the proposed change. A Local Boundary Commission decision under this subsection may be appealed under AS 44.62 (Administrative Procedure Act).

Similarly, State statutes permit a borough incorporation petition to be granted only if it

1. meets applicable standards under Alaska's Constitution;
2. meets applicable standards under regulations adopted by the Commission;
3. meets the standards for incorporation under AS 29.05.031; and
4. is in the best interests of the state.

Again, if those standards are not met, the incorporation petition must be denied. Specifically, AS 29.05.100(a) provides as follows:

The Local Boundary Commission may amend the petition and may impose conditions on the incorporation. If the commission determines that the incorporation, as amended or conditioned if appropriate, meets applicable standards under the state constitution and commission regulations, meets the standards for incorporation under AS 29.05.011 or 29.05.031, and is in the best interests of the state, it may accept the petition. Otherwise it shall reject the petition.

Details about the constitutional, statutory, and regulatory standards are provided, respectively, in parts II, III, and IV of this publication.

## II. CONSTITUTIONAL STANDARDS

The standards in Alaska's Constitution that apply to a borough detachment proposal are the same as those that apply to a borough incorporation proposal. Those standards are found in Sections 1, 2, 3, 5, 7, 12, and 13 of Article X of Alaska's Constitution. They are addressed in part II-A through II-G of this publication.

### A. Article X, Section 1

The first section of the Local Government Article of Alaska's Constitution provides as follows:

**Article X, Section 1. Purpose and Construction.** The purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions. A liberal construction shall be given to the powers of local government units.

Two important principles regarding borough boundaries have been widely recognized in Article X, Section 1. Those are addressed in parts II-A-1 and II-A-2 below.

#### **1. The Constitution encourages a minimum number of boroughs.**

Vic Fischer, Alaska Constitutional Conventional delegate and borough expert,<sup>1</sup> wrote that one of the guiding principles concerning borough formation set forth by the Committee on Local Government at Alaska's Constitutional Convention was that boroughs, "should be large enough to prevent too many subdivisions in Alaska . . ." Victor Fischer, *Alaska's Constitutional Convention*, University of Alaska Press, 1975, p. 119.

The LBC has expressed the view that Article X, Section 1 provides that "the creation of boroughs should be limited, not to a specific total number, but by the principle that only

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<sup>1</sup>Mr. Fischer has been recognized by the Alaska Supreme Court as "an authority on Alaska government." *Keane v. Local Boundary Commission*, 893 P.2d 1239, 1244 (Alaska 1995). The Court relied on his work in the *Keane* case (at 1242, 1243) and in *Mobil Oil Corp. v. Local Boundary Commission*, 518 P.2d 92, 98 (Alaska 1974). Mr. Fischer is well known to most members of the Commission. Mr. Fischer has held several planning-related positions in Alaska. He was a delegate to the Alaska Constitutional Convention in 1955-1956. During the Convention, he was a member of the Committee on Local Government and served as its Secretary. Mr. Fischer has written and co-authored a number of books and publications concerning state and local government in Alaska. These include *The State and Local Governmental System* (1970), *Borough Government in Alaska* (1971), and *Alaska's Constitutional Convention* (1975). Mr. Fischer served in Alaska's Territorial House of Representatives (1957-1959) and the Alaska State Senate (1981-1986). He was a member of the faculty of the University of Alaska Fairbanks and of the University of Alaska Anchorage. At the University, he was primarily associated with the Institute for Social and Economic Research, where he was director for ten years. His current work includes studying Alaska Native and regional governance issues.

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the minimum number of governments necessary to provide effective and efficient local self-government should be created.” *Fundamental Nature of Boroughs and Cities in Alaska*, Local Boundary Commission, adopted February 13, 2004, p. 10 (hereinafter, “*Nature of Boroughs and Cities*”).<sup>2</sup>

There are currently 16 organized boroughs in Alaska comprising an estimated 281,581 square miles of lands, tidelands, and submerged lands within the limits of the State of Alaska’s jurisdiction under AS 44.03.010.<sup>3</sup> The remainder, encompassing an estimated 374,843 square miles, is formally “established” under AS 29.03.010 as a single “unorganized borough.”

The LBC has stressed repeatedly over several years that, given the size and diversity of unorganized areas of Alaska, a single, residual unorganized borough falls far short of the constitutional intent regarding borough boundaries.<sup>4</sup> In 1990, the Commission initiated an effort to define the unorganized borough in terms of model boundaries based on constitutional, statutory, and regulatory boundary standards for borough incorporation. The Commission’s work was completed at the end of 1992. Funding for the project was provided by the Legislature. In the course of the effort, the LBC held hearings involving 88 communities. Since 1992, the model borough boundaries have been modified twice.<sup>5</sup>

Currently, 18 different model boroughs are defined in the unorganized borough. In addition, the Commission identified 5 parts of the unorganized borough that have greater social, cultural, economic, geographic, transportation, and other relevant ties to existing organized boroughs vis-à-vis any of the 18 model boroughs in the unorganized borough.

It is notable that the combined territory encompassed by the corporate boundaries of all 145 city governments in Alaska amounts to only about 4,350 square miles of lands, tidelands, and submerged lands. In comparison, the 16 organized boroughs and

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<sup>2</sup>The statement was first adopted by the Local Boundary Commission in its *Statement of Decision in the Matter of the Proposal to Dissolve the City of Skagway and Incorporate a Skagway Borough* (September 27, 2002) (hereinafter “*Skagway*”).

<sup>3</sup>The estimate of the size of the area within organized boroughs is based on data provided on the map entitled *Communities and Regions of Alaska*, dated June 15, 2003, and published by the Department of Community and Economic Development.

<sup>4</sup>Most recently, the LBC recently expressed the view that the 1961 law creating the single residual unorganized borough “disregarded the constitutional requirement that each borough must embrace an area of common interests.” *School Consolidation: Public Policy Considerations and a Review of Opportunities for Consolidation*, Local Boundary Commission and Department of Education and Early Development (February 2004), p. 30.

<sup>5</sup>The first modification occurred to the boundaries of the Prince William Sound Model Borough, which were reduced as a result of an annexation to the adjoining City and Borough of Yakutat. The second modification occurred when the LBC merged the former “Aleutian-Military Model Borough” into the “Aleutians West Region Model Borough” in December 2002, during the course of a study of the unorganized borough. (See *Unorganized Areas of Alaska that Meet Borough Incorporation Standards*, Local Boundary Commission (February 2003), p. 69.)

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18 model boroughs encompass the entire estimated 656,424 square miles of lands, tidelands, and submerged lands within the limits of the State of Alaska.

A map showing the 16 organized boroughs, 18 model boroughs, and 5 parts of the unorganized borough with ties to organized boroughs is provided on the following page.

Article X, Section 1 of Alaska's Constitution has been a crucial principle in determining the fate of previous efforts to carve up existing boroughs into multiple boroughs. Prior efforts to do so have included the following:

**Cook Inlet Borough.** In November 1971, a petition was submitted to the Local Affairs Agency<sup>6</sup> for detachment of 19.7 square miles from the Greater Anchorage Area Borough, including most, but not all, of the 16.8 square miles within the City of Anchorage<sup>7</sup> and incorporation of that same area as the "Cook Inlet Borough." On March 14, 1972, following a technical review of the petition, the Local Affairs Agency returned it to the petitioner to address certain "apparent deficiencies." On April 10, 1972, the petitioner returned the petition, unchanged, with a memorandum responding to the deficiencies alleged by the Local Affairs Agency. On May 2, 1972, the Local Affairs Agency accepted the petition for filing "without waiver of the deficiencies." (See *Cook Inlet Borough - Proposal for Incorporation as a First Class Borough*, Department of Community and Regional Affairs (January 19, 1973).) The LBC held a public hearing on the proposal on January 27, 1973. Following the hearing, the Commission denied the petition.

**Chugiak-Eagle River Borough.** In 1974, the Alaska Legislature authorized detachment of the Eagle River-Chugiak area from the Greater Anchorage Area Borough and incorporation of the detached area as a borough, subject to voter approval in the Eagle River-Chugiak area. The area in question extended from the northeast corporate boundaries of the City of Anchorage to the Knik River Bridge, encompassing approximately 900 square miles of lands, tidelands, and submerged lands. The remainder of the Greater Anchorage Area Borough comprised approximately 1,044 square miles.

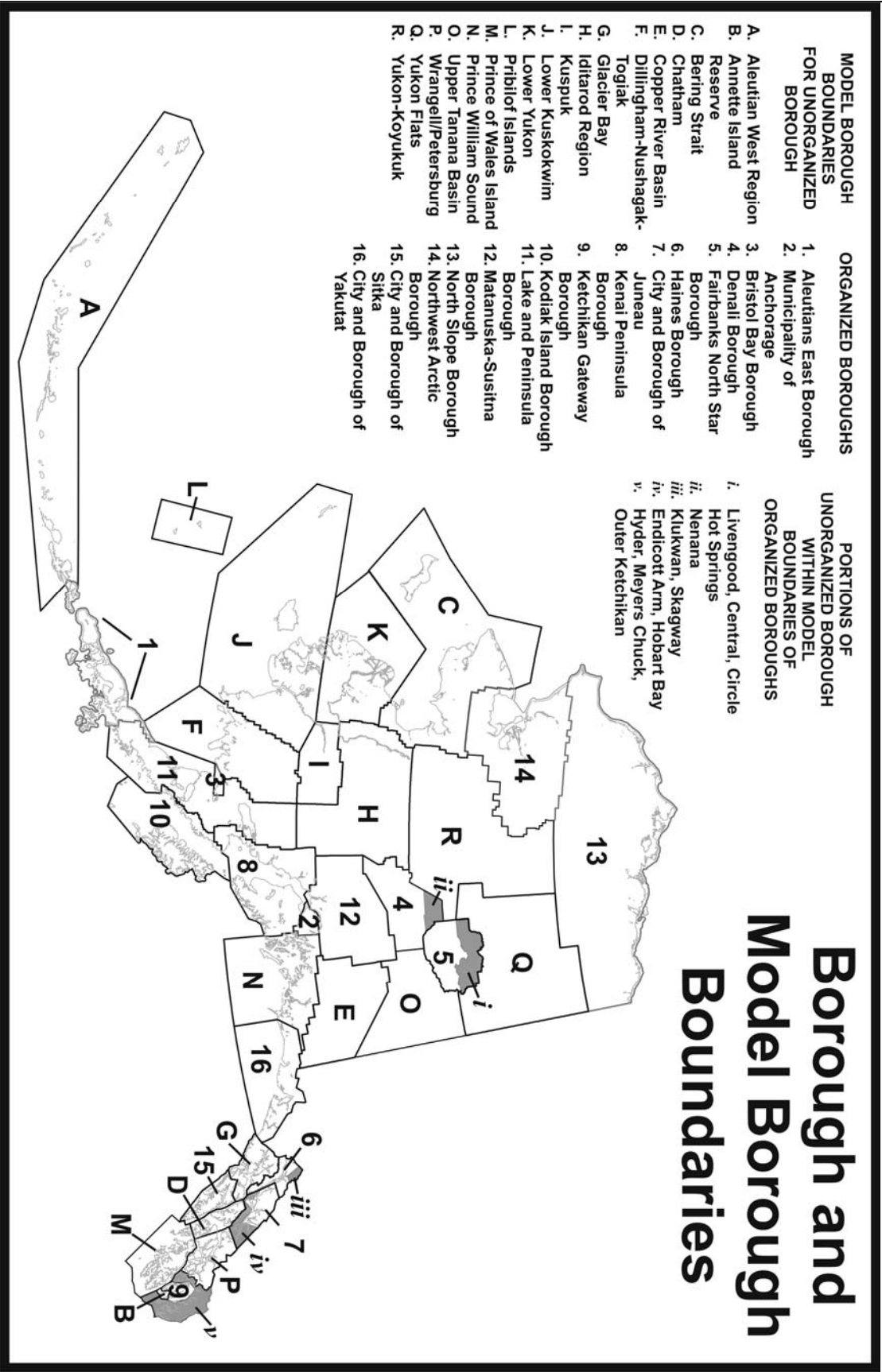
Eagle River-Chugiak voters approved the proposition to form the borough. The Chugiak-Eagle River Borough was officially incorporated on September 12, 1974.

On October 30, 1974, the legislative act (Chapter 145 SLA 1974) authorizing the creation of the borough was challenged in court. The appeal claimed that the act violated Article II, Section 19 of Alaska's Constitution, which provides that, "The legislature shall pass no local or special act if a general act can be made applicable."

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<sup>6</sup>The Local Affairs Agency became the Department of Community and Regional Affairs in 1972. The Department of Community and Regional Affairs and the Department of Commerce were consolidated as the Department of Community and Economic Development in 1999.

<sup>7</sup>That portion of Elmendorf Air Force Base lying within the City of Anchorage was not included in the detachment/incorporation proposal.



On April 15, 1975, the Alaska Supreme Court held that Chapter 145 SLA 1974 did, indeed, violate Article II, Section 19 of Alaska's Constitution. The ruling resulted in the automatic reincorporation of the Eagle River-Chugiak area into the Greater Anchorage Area Borough.

In September 1975, voters in the Eagle River-Chugiak area petitioned the LBC for detachment from the Anchorage borough and incorporation of the Chugiak-Eagle River Borough. On October 29, 1975, the Commission held a hearing at the Chugiak High School regarding the proposal. The LBC denied the petition for detachment and determined that denial of the detachment petition mooted the petition for incorporation of the Chugiak-Eagle River Borough.

On January 7, 1976, the Chugiak-Eagle River Borough association, an unincorporated association organized to bring self-government to Chugiak-Eagle River, and the members of its board of directors individually appealed the Commission's decision to superior court. On March 16, 1977, Superior Court Judge James K. Singleton, Jr., affirmed the decision of the Local Boundary Commission (*Chugiak-Eagle River Borough Association, et al., v. Local Boundary Commission, et al.*, No. 76-104, slip op. (Alaska March 16, 1977)).

In rendering his decision, Judge Singleton stressed provisions in Section 1 of the Local Government Article of Alaska's Constitution (along with Sections 3 and 5) stating (*at 9*):

The constitution mandates that in setting boundaries the commission strive to maximize local self government, i.e. as opposed to administration by the state government, but with a minimum of local government units preventing where possible the duplication of tax levying jurisdictions. See art. X, sec. 1. Further, the constitution tells us that each borough should embrace an area and population with common interests to the maximum degree possible. See art. X, sec. 3. Finally, while the constitution encourages the establishing of service areas to provide special services within organized boroughs it cautions that 'a new service area shall not be established if, consistent with the purposes of this article, the new service can be provided by an existing service area, by incorporation as a city or by annexation to a city . . .' See art. X, sec. 5.

The constitution is thus clear that if large local governmental entities can provide equal services small governmental entities shall not be established. The legislature has recognized this. . . .

Judge Singleton, in fact, went so far as to declare that Alaska's Constitution and statutes actually barred the Commission from approving the detachment unless the Anchorage borough either could not or would not provide essential services to the Eagle River-Chugiak area. Specifically, he stated (*at 10*):

[T]he commission correctly recognized that the true question posed by constitution and statute is whether the area could function as part of the municipality. It is only if the facts support a negative answer to this



question, e.g. that the municipality either couldn't or wouldn't furnish needed services, that the commission could lawfully permit detachment.

**Salcha Borough.** On December 12, 1979, residents of the Salcha Voting Precinct in the Fairbanks North Star Borough petitioned the LBC to detach an estimated 3,125 square miles from the Fairbanks North Star Borough and incorporate that area as a third-class borough. The Local Boundary Commission held a public hearing on the matter in the Salcha Elementary School on September 26, 1980. Following the hearing, the Commission left the record open for the receipt of additional evidence. On October 27, 1980, the LBC met in the Fairbanks North Star Borough Assembly Chambers, at which time the LBC rejected the proposal.

**Nikiski Borough.** In 1973 and again in the early 1980s, residents of the greater Nikiski area in the Kenai Peninsula Borough proposed to detach from the Kenai Peninsula Borough and form a Nikiski Borough. The proposals were unsuccessful.

**Northwest Arctic Borough.** On November 22, 1985, the Commissioner of the Department of Community and Regional Affairs petitioned the LBC for detachment of 3,298 square miles from the 98,068 square-mile North Slope Borough. The area petitioned for detachment was uninhabited. It consisted of those lands within the NANA Region established under the Alaska Native Claims Settlement Act lying within the North Slope Borough.

The petition proposed that detachment would be conditioned upon incorporation of a new borough encompassing the 3,298 square miles proposed for detachment plus the adjoining 35,852 square mile unorganized Northwest Arctic Regional Educational Attendance Area. The 3,298 square-mile area encompassed the proposed Red Dog zinc mine development, which was considered a key to the economic viability of a Northwest Arctic Borough. Given the circumstances, the principle in Article X, Section 1 encouraging a minimum number of boroughs, was not a barrier to detachment.

Given the proposed condition that detachment occur only upon formation of a new borough encompassing 35,852 square miles of previously unorganized area and more than 6,000 residents of the unorganized borough, the proposed boundary change was consistent with the second principle found in Article X, Section 1. That is, the principle encouraging the extension of borough government addressed in part II-A-2.

The LBC approved the detachment proposal on January 19, 1986. The Commission approved a subsequent petition for incorporation of the Northwest Arctic Borough on March 14, 1986. The Borough was officially incorporated on June 2, 1986.

**North Pole Borough.** On March 17, 1994, a petition to detach an estimated 5,400 square miles from the 7,361 square-mile Fairbanks North Star Borough was lodged with the Department of Community and Regional Affairs. A separate petition to incorporate a North Pole Borough encompassing approximately 9,350 square miles was also submitted to the Department on the same day. Protracted efforts followed to remedy deficiencies in the petitions. The LBC held public hearings on

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the proposals in North Pole on August 6, 1996, and in Fairbanks on August 7, 1996. The Commission rejected the proposals on August 30, 1996.

When the Commission rejected the North Pole Borough proposal, it stressed that:

Article X, Section of Alaska's Constitution establishes a policy for minimizing the number of local government units. The Commission finds that the [North Pole Borough] proposal would create two boroughs to serve virtually the same population now being served by one. Such would be inconsistent with the constitutional policy noted.

*Statement of Decision in the Matter of the Petition for Detachment of 5,400 Square Miles from the Fairbanks North Star Borough and the Petition for Incorporation of the Home Rule North Pole Borough*, Local Boundary Commission (August 30, 1996), p. 11.

Beyond the multiple proposals to divide one borough government into two, there have been a number of proposals to detach territory from organized boroughs and shift the detached territory to the unorganized borough. Only one such proposal was successful. In 1973, the LBC approved the detachment of 12 square miles from the City and Borough of Sitka. The area approved for detachment encompassed the unincorporated community of Port Alexander. Port Alexander is located on the south end of Baranof Island, 65 miles south of Sitka. It is accessible only by boat or seaplane. In 1970, it had a population of 36. The LBC approved detachment of Port Alexander on the condition that the community incorporate as a city government.

All other efforts to detach territory from existing boroughs and shift the detached area into the unorganized borough, however, have been unsuccessful. Those include the following:

- ✓ 1965 proposal to detach Tyonek (Moquawkie Reservation) from the Kenai Peninsula Borough (denied by the LBC),
- ✓ 1983 proposal to detach Lake Louise from the Matanuska-Susitna Borough (denied by the LBC);
- ✓ 1992 proposal to detach Portage from the Municipality of Anchorage (petition withdrawn); and
- ✓ 1995 proposal to detach Lake Louise from the Matanuska-Susitna Borough (denied by the LBC).

The 1995 Lake Louise detachment proposal attempted to replicate the action taken with respect to Port Alexander. However, the proposal failed, in large part, because Commission members stressed that such “diminishes local self-government . . . and fails to minimize the number of local governments.” (See *Statement of Decision in the Matter of the July 16, 1996, Petition for incorporation of the Second-Class City of Lake Louise*, Local Boundary Commission (February 13, 1997), p. 5.) The 1995 Lake Louise decision reflects greater emphasis on the principles in Article X, Section 1 than was the case in Port Alexander.

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In addition to the foregoing, serious interest has been expressed to the LBC or its staff regarding detachment of the following areas from organized boroughs:

- ◆ the “Two Rivers area” from the Fairbanks North Star Borough;
- ◆ Excursion Inlet area from the Haines Borough;
- ◆ Beluga area from the Kenai Peninsula Borough;
- ◆ Cooper Landing area from the Kenai Peninsula Borough;
- ◆ the Lower Peninsula area from the Kenai Peninsula Borough;
- ◆ the southwest portion of the Lake and Peninsula Borough (a/k/a the “Chigniks” area);
- ◆ Eastern portion of the Matanuska-Susitna Borough from that borough;
- ◆ Palmer-Wasilla area from the Matanuska-Susitna Borough;
- ◆ Trapper Creek area in the Matanuska-Susitna Borough; and
- ◆ Girdwood area from the Municipality of Anchorage

Moreover, a number of small vicinities in the unorganized borough have historically expressed interest in forming organized boroughs.<sup>8</sup> In many cases, that interest persists.<sup>9</sup> Those vicinities and 2003 population data for the vicinities are listed below:

- ◆ Pelican (population: 113);
- ◆ Holy Cross (population: 209);
- ◆ Tanana (population 290);
- ◆ Nenana (population 519);
- ◆ Kake (population 682);
- ◆ Skagway (population 845);
- ◆ Hoonah (population 851);
- ◆ Galena-Ruby (population 932);
- ◆ Wrangell (population 2,113);
- ◆ Cordova (population 2,372);
- ◆ Dillingham- Aleknagik (population 2,608);
- ◆ Petersburg (population 3,060);
- ◆ Nome (population 3,448);
- ◆ Valdez (population 4,060);
- ◆ Unalaska (population 4,388); and
- ◆ Bethel (population 5,899).

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<sup>8</sup>The interest in borough incorporation was solely for each particular vicinity, not the entire region in which the vicinity is located as considered in the model borough boundary study.

<sup>9</sup>Most of the vicinities in question are currently incorporated as home rule or first class city governments in the unorganized borough. As such, they operate city school districts under AS 14.12.010(1). It is noteworthy that a number of those city school districts fall far below the 250-student threshold set under AS 14.12.025 for the establishment of a new school district, absent a determination from the Commissioner of the Department of Education and Early Development “that formation of a new school district with less than 250 pupils would be in the best interest of the state and the proposed school district.” For example, in FY 2004, the City of Pelican School District had only 15 students, the City of Tanana School District had only 63 resident students, the City of Skagway School District had only 106 students, the City of Kake had only 155 students, and the City of Hoonah had only 180 students.

In September 2002, the LBC rejected a petition to incorporate a Skagway borough encompassing boundaries identical to those of the City of Skagway (the petition also sought the concurrent dissolution of the City of Skagway). In rejecting the Petition, the Local Boundary Commission stressed that Article X, Section 1 of Alaska's Constitution promoted minimum numbers of local governments. (See *Skagway* at 17.)

It is also relevant to note that prior to the incorporation of the Kenai Peninsula Borough, the LBC denied a proposal in 1963 to incorporate a Homer-Ninilchik Borough. That proposal encompassed an estimated 1,400 square miles in the southwest portion of the Kenai Peninsula. In rejecting the Homer-Ninilchik Borough proposal, the Commission, again, cited constitutional concerns. (See *Areawide Local Government in the State of Alaska – The Genesis, Establishment, and Organization of Borough Government*, Ronald C. Cease (1964), pp. 59 – 62.)

In sum, Article X, Section 1 is a barrier against the “Balkanization” of Alaska into small, community-level borough governments.

**2. Alaska's Constitution encourages the extension of borough government; however, there is no obligation to approve a proposal that only minimally meet the standards.**

Article X, Section 1 of Alaska's constitution promotes maximum local self-government, including the extension of borough government in areas that satisfy the standards for borough incorporation and annexation. Regarding borough incorporation, the Alaska Supreme Court held as follows:

Our review of the record has been undertaken in light of the statement of purpose accompanying article X, the local government article, of the Alaska constitution. Section 1 declares in part:

The purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions. . . .

We read this to favor upholding organization of boroughs by the Local Boundary Commission whenever the requirements for incorporation have been minimally met.

*Mobil Oil Corp. v. Local Boundary Commission*, 518 P.2d 92, 99 (Alaska 1974).

The Court's reading of Article X, Section 1 has been misconstrued by some as a requirement that the LBC is obligated to approve petitions that only minimally meet the standards. That issue was addressed in the 1977 ruling regarding the appeal of the decision by the Local Boundary Commission relating to the proposal to form a Chugiak-Eagle River Borough. Superior Court Judge James K. Singleton, Jr., stated as follows:

[T]here is nothing in *Mobil Oil Corp. v. Local Boundary Commission*, 518 P.2d 92 (Alaska 1974) inconsistent with the commission's decision. It is true that Justice Erwin did indicate in upholding a boundary commission

decision incorporating the North Slope as a 'regional borough' that art. X, sec. 1 of the constitution should be read to '... favor upholding organization of boroughs by the local boundary commission whenever the requirements for incorporation have been minimally met ...' But in so saying, Justice Erwin made it clear that he was referring to the incorporation of regional boroughs out of the unorganized borough and not a decision to split one borough into two. See particularly the discussion at 518 P.2d 104.

Moreover, in *Yakutat v. Local Boundary Commission*, 900 P.2d 721, 727 (Alaska 1995), the State Supreme Court left no question that the Local Boundary Commission was under no obligation to approve a minimally acceptable petition:

Petitioners' arguments, however, reflect the mistaken premise that the LBC must approve any minimally acceptable petition for incorporation and has only limited authority to consider or adopt "the most desirable" borough boundaries.

Subsequent to *Yakutat*, State statutes were amended, eliminating any ambiguity regarding the exercise of judgment in granting a petition. Commenting on the amended law, the LBC noted that it clearly allows discretion in the approval of a petition, even if it meets all of the applicable standards. In *Nature of Boroughs and Cities*, p. 11, the Commission stated:

It is difficult to conjecture circumstances under which the Commission would reject a borough proposal if it met each of the applicable standards; however, the Commission clearly has that prerogative. The use of the term 'may' in the second sentence of AS 29.05.100(a) leaves no doubt that the Commission has discretion to approve any borough incorporation petition, even if it meets all requisite standards.

## **B. Article X, Section 2**

The second section of the Local Government Article of Alaska's Constitution states as follows:

**Article X, Section 2. Local Government Powers.** All local government powers shall be vested in boroughs and cities. The State may delegate taxing powers to organized boroughs and cities only.

The second section of the Local Government Article of Alaska's Constitution is relevant in terms of borough boundaries in that it provides for two distinct types of local governments – city governments and borough governments. Important distinctions between the two types of governments are addressed below.

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## **1. City governments are community-level governments subject to the “limitation of community” doctrine; borough governments are regional governments not subject to the doctrine.**

City governments are community-level governments that are subject to the “limitation of community” doctrine; borough governments are regional governments that are not subject to that doctrine. The Alaska Supreme Court held as follows concerning the distinction:<sup>10</sup>

[Appellants] offer a series of cases striking down municipal annexations and incorporations where the lands taken have been found to receive no benefit. We find this authority unpersuasive when applied to borough incorporation. In most of these cases, the courts inferred from statutes or state constitutions what has been called a ‘limitation of community’ which requires that the area taken into a municipality be urban or semi-urban in character.

There must exist a village, a community of people, a settlement or a town occupying an area small enough that those living therein may be said to have such social contacts as to create a community of public interest and duty. . . .

The limitation has been found implicit in words like ‘city’ or ‘town’ in statutes and constitutions or inferred from a general public policy of encouraging mining or agriculture. In other cases, the limitation has been expressed as a finding that the land taken is not susceptible to urban municipal uses. The result in these cases was determined not by a test of due process but by restrictions in pertinent statutes and constitutions on the reach of municipal annexations and incorporations.

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<sup>10</sup>In the *Mobil Oil* case (involving incorporation of the North Slope Borough), the Court addressed the limitation of communities doctrine by making a distinction between boroughs and what it termed “municipalities” (e.g., “boroughs are not restricted to the form and function of municipalities”). The Commission expressed the view in *Nature of Boroughs and Cities*, n.3, that clearly:

[T]he Court was referring in the *Mobil Oil* case to ‘cities’ (or derivatives thereof such as ‘city’, or ‘city government’) when it used the term ‘municipalities’, (or derivatives thereof such as ‘municipality’, or ‘municipal’). It is significant in that regard that when the North Slope Borough incorporation petition was filed, statutory standards and procedures for borough incorporation as well as other laws concerning boroughs were codified in ‘Alaska Statutes – Title 7 – Boroughs.’ In contrast, statutes relating to cities were codified in Alaska Statutes – Title 29 – Municipal Corporations. The Court made reference to borough standards and other provisions in AS 07 seventeen times in the *Mobil Oil* case. In 1972, Titles 7 and 29 of the Alaska Statutes were repealed, and new laws concerning both cities and boroughs were enacted as ‘Alaska Statutes – Title 29 – Municipal Government’. Today, AS 29 refers to both cities and boroughs as municipalities. The distinction in the terms used by the Court in *Mobil Oil* to describe the two types of governments (i.e., ‘boroughs and ‘municipalities’) was purely nominal. However, the distinction made by the Court as to the form of the two types of governments (boroughs and cities) was significant.

Aside from the standards for incorporation in AS 07.10.030, there are no limitations in Alaska law on the organization of borough governments. Our constitution encourages their creation. Alaska const. art. X, § 1. And boroughs are not restricted to the form and function of municipalities. They are meant to provide local government for regions as well as localities and encompass lands with no present municipal use.

*Mobil Oil*, at 100 (footnotes omitted).

The limitation of communities doctrine is clearly implicit in AS 29.05.011 regarding city incorporation. AS 29.05.011 refers repeatedly (seven times) to the area of a proposed city as a “community.” Further, AS 29.05.011(a)(2) requires boundaries of a city to provide “municipal services on an efficient scale” (emphasis added). Perhaps most significantly, AS 29.05.011(a)(5) requires “a demonstrated need for city government” in the area proposed for incorporation.

Article X, Section 3 of Alaska’s Constitution requires that the entire state must be divided into boroughs. In contrast to cities, the statutory standards for borough incorporation (AS 29.05.031) contain no requirement that the area within a borough exhibit a reasonable need for borough services or that boundaries provide for municipal services on any particular scale.

The limitation of communities doctrine is explicit in the regulations of the LBC. Specifically, 3 AAC 110.040(b) and (c) provide as follows:

(b) The boundaries of the proposed city must include only that territory comprising a present local community, plus reasonably predictable growth, development, and public safety needs during the 10 years following the effective date of incorporation.

(c) The boundaries of the proposed city may not include entire geographical regions or large unpopulated areas, except if those boundaries are justified by the application of the standards in 3 AAC 110.005 - 3 AAC 110.042.

In contrast, the Commission’s regulatory standards for borough incorporation make reference to large, natural regions as reflected in model borough boundaries and the boundaries of regional educational attendance areas. Specifically, 3 AAC 110.060(b) and (c) state as follows:

(b) Absent a specific and persuasive showing to the contrary, the commission will not approve a proposed borough with boundaries extending beyond any model borough boundaries.

(c) The proposed borough boundaries must conform to existing regional educational attendance area boundaries unless the commission determines, after consultation with the commissioner of education and early development, that a territory of different size is better suited to the

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public interest in a full balance of the standards for incorporation of a borough.

### **C. Article X, Section 3**

The third section of the Local Government Article of Alaska's Constitution provides as follows:

**Article X, Section 3. Boroughs.** The entire State shall be divided into boroughs, organized or unorganized. They shall be established in a manner and according to standards provided by law. The standards shall include population, geography, economy, transportation, and other factors. Each borough shall embrace an area and population with common interests to the maximum degree possible. The legislature shall classify boroughs and prescribe their powers and functions. Methods by which boroughs may be organized, incorporated, merged, consolidated, reclassified, or dissolved shall be prescribed by law.

That section of the Local Government Article of Alaska's Constitution promotes boroughs that embrace large, natural regions. Those principles, reflected in Article X, Section 3, are addressed in parts II-C-1 and II-C-2 below.

#### **1. Geographically, the framers of Alaska's Constitution envisioned boroughs to be relatively large regional units, while cities were intended to be relatively small units.**

The Committee on Local Government at Alaska's Constitutional Convention envisioned boroughs as governmental units that would encompass large areas. According to Vic Fischer:

As the committee was evolving [borough] principles, its members agreed that some type of unit larger than the city and smaller than the state was required to provide both for a measure of local self-government and for performance of state functions on a regionalized basis.

. . . the initial principles set forth by the committee for consideration in the formation of the new areawide government units included these guidelines: . . .

Units should cover large geographic areas with common economic, social, and political interests. . . .

*Alaska's Constitutional Convention*, p. 118 – 119.

In *Skagway*, the LBC observed (at 12 –13):

The fourth sentence of Article X, Section 3, which provides that '[e]ach borough shall embrace an area and population with common interests to



the maximum degree possible', is particularly significant with regard to the fundamental characteristic at issue. This sentence, by itself, does not indicate the territorial or socioeconomic scale at which the commonality of interests ought to be evaluated. The minutes of the Alaska Constitutional Convention, however, provide compelling evidence as to the framers' intent with respect to the character and scope of boroughs. In the following exchange, delegate John Rosswog, Chairman of the Committee on Local Government, responded to a query from delegate John Coghill on January 19, 1956 about the Committee's intent with respect to the language that each borough shall embrace an area and population with common interests to the maximum degree possible.

COGHILL: Further on in Section 3, I would like to ask you, Mr. Rosswog, on line 6 of page 2, 'Each borough shall embrace, to the maximum extent possible, an area and population with common interests.' My question here is directed to you to find out what the Committee's thinking was as to boundary areas of local government. Could you give us any light on that as to the extent? I know that you have delegated the powers to a commission, but you have said that each borough shall embrace the maximum extent possible. I am thinking now of an area that has maybe five or six economic factors in it — would they come under one borough?

ROSSWOG: We had thought that the boundaries should be flexible, of course, and should be set up so that we would not want too small a unit, because that is a problem that has been one of the great problems in the states, the very small units, and they get beyond, or they must be combined or extended.

*Proceedings of the Alaska Constitutional Convention, Alaska State Legislature, Legislative Council*), p. 2620 – 2621 (1963).

A nearly identical question arose on the floor of the Convention later that same day. Delegate Barrie White inquired about the Local Government Committee's intent with respect to the term "maximum extent possible." Committee member James Doogan and Committee Chairman John Rosswog responded:

WHITE: Mr. President, on page 2, Section 3, I would like to ask the Committee, on line 4, if the words "to the maximum extent possible" could be construed to mean the largest possible area?

PRESIDENT EGAN: Mr. Doogan.

DOOGAN: I think that is the intent. It was pointed out here that these boroughs would embrace the economic and other factors as much as would be compatible with the borough, and it was the intent of the Committee that these boroughs would be as

large as could possibly be made and embrace all of these things.

WHITE: Is it the thinking of the Committee that the largest possible area, combining area and population, with common interest, would be the most desirable type of borough?

PRESIDENT EGAN: Mr. Rosswog.

ROSSWOG: Could I answer on that? I think that was the idea or the thinking of the Committee that they would have to be fairly large but the wording here would mean that we should take into consideration the area and population and common interest to the maximum extent possible because you could not say definitely that you were taking it all in, but as much as you possibly could.

*Id.* p. 2638.

The following day, January 20, 1956, delegate Katherine Nordale raised the virtually identical question. Vic Fischer, Local Government Committee Secretary, responded.

NORDALE: Mr. President, I think this was brought up yesterday, but I have sort of forgotten what was said. It is just a question. On line 4, page 2 of Section 3, there was some discussion of the wording, 'Each borough shall embrace to the maximum extent possible an area and population with common interests.' Does that mean to the greatest degree it shall be a group of people with common interests? Nothing to do with the area — I mean the square mile?

V. FISHER: What it means is that wherever possible, 'Each borough shall embrace an area and population with common interests.'

*Id.* p. 2711.

In summary, the constitutional, statutory, and regulatory standards for local governmental boundaries indicate that cities are meant to be local community governments, and boroughs are meant to be regional governments. Indeed, it is difficult to suppose that a city government's boundaries could be consistent with both 3 AAC 110.040(b) and the constitutional and statutory standards for borough boundaries.

## **2. Boroughs must embrace regions with common social, cultural, and economic interests – in other words, natural regions.**

The requirement found in Article X, Section 3 that, "Each borough shall embrace an area and population with common interests to the maximum degree possible requires

maximization of the area and population within each borough so long as that area and population retains common interests. In *Skagway*, the Commission addressed this issue at length (at 13 – 16):

The following discussion on the floor of the Constitutional Convention on January 19, 1956 between delegate James Hurley, Local Government Committee Chairman John Rosswog, Local Government Committee member Eldor Lee and delegate John Hellenthal is important in several respects in terms of defining the nature of a borough. It demonstrates that the Local Government Committee had no precise upper or lower limits in mind regarding the geographic size of boroughs. It also stresses the importance of flexibility in setting borough boundaries. Further, the dialogue provides additional evidence that the delegates foresaw, in general terms, relatively large boroughs. Perhaps most importantly, however, the exchange provides insights with respect to the framers' vision concerning the requisite degree of common interests within boroughs.

HURLEY: Mr. President, going back to Section 4, the matter has been mentioned many times about the possible thinking as to the size of the boroughs. I took occasion to check back into the criteria which would be used for the establishment of election districts. I find that except for two different words they are the same as the criteria that you use for the establishment of boroughs: population, geographic features, and the election districts say integrated socio-economic areas, and you say economy and common interests which I think means the same thing. Consequently, I might be led to the conclusion that your thinking could well be carried out by making election districts and boroughs contiguous or congruous, the same area, is that true?

ROSSWOG: It was thought this should be left very flexible. Of course, you would not say they should be the same as election districts because of rather unwieldiness for governing. It would more possibly, and should, take more study of whether the size should bear on whether your governing body would be able to supervise an area of that size.

PRESIDENT EGAN: Mr. Lee.

LEE: Mr. Hurley, I think we are unanimous in the opinion that many of these boroughs will be substantially the same as election districts but that is just the idea that we had in mind. Some of them won't be feasible, but in our thinking I consider that form of boroughs we felt they would be much the same as an election district.

PRESIDENT EGAN: Mr. Hellenthal.

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HELLENTHAL: Did any of you think that they might ever be greater than the election districts in size?

LEE: If that question is directed to me, we did not give it any consideration because actually we have not made any statement about the size. But in our thinking we didn't consider that thought, but it is certainly very possible.

HELLENTHAL: In other words, that the boundaries of the election districts could possibly be maximums governing the size of the boroughs?

LEE: It is possible. It is up to the legislature to decide.

HELLENTHAL: Would it be desirable to make them minimums?

LEE: That would take away the flexible portion which we wish to keep here.

HELLENTHAL: I gather then you would not desire to make them minimums but probably would have little objection to making them maximum.

LEE: I can't speak for the Committee. I would have no objection, personally.

The framers envisioned that the initial State election districts would be, in many cases, models for future boroughs. As originally adopted, Article VI, Section 6 of Alaska's constitution established the following standards for drawing State House election districts (emphasis added by underlining):<sup>[11]</sup>

Section 6. Redistricting. The governor may further redistrict by changing the size and area of election districts, subject to the limitations of this article. Each new district so created shall be formed of contiguous and compact territory containing as nearly as practicable a relatively integrated socio-economic area. Each shall contain a population at least equal to the quotient obtained by dividing the total civilian population by forty. Consideration may be given to local government boundaries. Drainage and other geographic

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<sup>11</sup> "Article VI was amended in 1999. The amendments dealt principally with the process for redistricting. However, two changes dealt somewhat with the standards. Both occurred in the third sentence which was revised as follows (added text in bold type and underlined, deleted text struck through): 'Each shall contain a population **as near as practicable at least equal** to the quotient obtained by dividing the ~~total civilian~~ population **of the state** by forty.'"

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features shall be used in describing boundaries wherever possible.

The Alaska Supreme Court addressed the meaning of the term 'relatively integrated socio-economic area' with respect to election districts in *Hickel v. Southeast Conference*, 846 P.2d 38, 47 (Alaska 1992) (emphasis added):

The Alaska Constitution requires districts comprising “relatively integrated” areas. . . . “Relatively” means that we compare proposed districts to other previously existing and proposed districts as well as principal alternative districts to determine if socio-economic links are sufficient. “Relatively” does not mean “minimally,” and it does not weaken the constitutional requirement of integration.

The framers’ vision that the initial State election districts were, in many cases, models for future boroughs is reinforced by the fact that election district boundaries were used to define prospective boroughs in the 1963 Mandatory Borough Act. As introduced by Representative John L. Rader, the mandatory borough legislation called for the compulsory incorporation of the nine State election districts in Alaska that encompassed independent school districts.<sup>[12]</sup>

The mandatory borough legislation was introduced just four years after Alaska’s constitution took effect. The short interval between those two seminal events, in the view of the Commission, is further evidence of the suitability of the early election districts for borough boundaries. Six of the twenty members (30%) of the 1963 Senate had been delegates to the Constitutional Convention.<sup>[13]</sup> Additionally, two members of the 1963 House of Representatives had been Constitutional Convention delegates.<sup>[14]</sup>

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<sup>12</sup> “<sup>18</sup>House Bill No. 90 provided that the areas would be incorporated as boroughs by legislative fiat if the voters in those regions failed to form boroughs before January 1, 1964. The nine regions were designated as follows in Section 3 of House Bill No. 90:

- (1) Anchorage Election District;
- (2) Lynn Canal – Icy Straits Election District;
- (3) Ketchikan – Prince of Wales Election District;
- (4) Kodiak Election District;
- (5) Palmer – Wasilla – Talkeetna Election District;
- (6) Sitka Election District;
- (7) Fairbanks – Fort Yukon Election District;
- (8) Juneau Election District; and
- (9) Kenai – Cook Inlet Election District.”

<sup>13</sup> “<sup>19</sup>The former delegates in the 1963 Senate were Senators Coghill, Kilcher, McNealy, Nolan, Peratrovich, and Smith.”

<sup>14</sup> “<sup>20</sup>The former delegates that were members of the 1963 House of Representatives were Representatives Sweeney and Taylor.”

Moreover, the Commission considers it noteworthy that the use of election districts to define borough boundaries in the 1963 mandatory borough legislation occurred just two years after the Alaska Legislature first adopted statutory standards for incorporation of boroughs. That fact becomes even more significant when it is recognized that 11 of the 20 Senators (55%) and 23 of the 40 Representatives (57.5%) in the 1963 Legislature had held the same elected offices during the 1961 Legislature.<sup>[15]</sup>

While the early State election districts were viewed by the framers to be, in many cases, suitable borough models, the Commission does not take the position that the same is necessarily true today. Social and economic integration remains a fundamental characteristic of election districts for the State of Alaska, however, there have been numerous social, political, and legal developments which have had great influence over the size and configuration of election districts in Alaska. Social changes include a significantly greater concentration of Alaska's population in southcentral Alaska. Political changes include the uniform use of single-member election districts throughout Alaska.<sup>[16]</sup> They also include the enactment of legislation such as the Federal Voting Rights Act which have significantly influenced the configuration of election districts in Alaska. Lastly, judicial rulings have shaped election districts. For example, in *Hickel v. Southeast Conference, id.* at 62, the Alaska Supreme Court directed that certain factors be given priority in the drawing of house election districts.<sup>[17]</sup>

Priority must be given first to the Federal Constitution, second to the federal voting rights act, and third to the requirements of article VI, section 6 of the Alaska Constitution. The requirements of article VI, section 6 shall receive priority in the following order: (1) contiguousness and compactness, (2) relative socioeconomic integration, (3) consideration of local government boundaries, (4) use of

<sup>15</sup> "21 The Senators were Bronson, Coghill, Hopson, McNealy, Nolan, Owen, Peratrovich, Brad Phillips, Vance Phillips, Smith, and Walsh. The Representatives were Baggen, Baker, Binkley, Blodgett, Boardman, Cashel, Christiansen, Ditman, Hammond, Harris, Jarvela, Kendall, Kubley, Leonard, Longworth, Parsons, Pearson, Reed, Sanders, Stalker, Strandberg, Sweeney, and Taylor."

<sup>16</sup> "22 The initial election districts in the more populous areas of Alaska encompassed multiple House seats to retain their regional characteristics. Of the original 24 districts, five were two-member districts, one was a five-member district, and one was an eight-member district. The remaining seventeen districts were all single-member districts. The current plan utilizes forty single-member districts, which diminishes the regional character of those districts in the more populous areas."

<sup>17</sup> "23 The Alaska Supreme Court adhered to the same priorities in *re 2001 Redistricting Cases*, 44 P.3d 141 (Alaska 2002)."

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drainage and other geographic features in describing boundaries.

While it can no longer be said that election districts make for ideal borough boundaries in most cases, the original vision does provide a measure of the geographic scale within which boroughs were expected to exhibit a distinguishing degree of social, cultural, and economic integration.

## **D. Article X, Section 5**

The fifth section of the Local Government Article of Alaska's Constitution states as follows:

**Article X, Section 5. Service Areas.** Service areas to provide special services within an organized borough may be established, altered, or abolished by the assembly, subject to the provisions of law or charter. A new service area shall not be established if, consistent with the purposes of this article, the new service can be provided by an existing service area, by incorporation as a city, or by annexation to a city. The assembly may authorize the levying of taxes, charges, or assessments within a service area to finance the special services.

As discussed briefly below, the provisions of Article X, Section 5 have been viewed to encourage large borough service providers and to reflect further distinctions between city governments and borough governments.

As noted earlier, in rendering his 1977 decision in Chugiak-Eagle River, Judge Singleton cited (*at* 9) Section 5 of Article X among the constitutional principles leading to the conclusion that "if large local governmental entities can provide equal services small governmental entities shall not be established."

Further, in *Skagway*, the Commission noted (*at* 16):

Article X, Section 5 of the constitution allows boroughs to establish service areas. There is no comparable constitutional provision for city governments.<sup>[18]</sup> In the Commission's view, such reflects the vision that, as relatively large units of government, boroughs require the flexibility to establish service areas to meet the varying needs of particular communities within boroughs.

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<sup>24</sup>The Commission recognizes that AS 29.45.580 authorizes city governments to establish differential property tax zones. In some respects, those are the city equivalent to a borough service area. However, the Commission still considers Article X, Section 5 to be evidence of the intended large scale of boroughs."

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**E. Article X, Section 7**

The seventh section of the Local Government Article of Alaska's Constitution deals with cities. It provides as follows:

**Article X, Section 7. Cities.** Cities shall be incorporated in a manner prescribed by law, and shall be a part of the borough in which they are located. Cities shall have the powers and functions conferred by law or charter. They may be merged, consolidated, classified, reclassified, or dissolved in the manner provided by law.

**1. Boroughs should generally include multiple communities and boundaries that promote efficient, effective service delivery.**

In *Skagway (at 16)*, the LBC cited Section 7 (and Sections 5 and 13 of the Local Government Article of the Constitution) as generally encouraging multiple communities within each borough and boundaries that enable boroughs "to provide services efficiently and effectively."

In terms of the distinctions between city and borough governments, the Commission observed (*at 16-17*):

Another indicator of the framers' vision regarding the relative scale of city and borough governments is found in Article X, Section 7 of Alaska's constitution. That provision reinforces the perspective that boroughs are large units and cities are small units by stating that cities, 'shall be part of the borough in which they are located.'

On January 20, 1956, delegate Vic Fischer expressed the view that it is "unimaginable" that a city would be the same size as a borough as reflected in the following exchange.<sup>[19]</sup>

GRAY: Mr. Chairman, I would like to ask the Committee a question. Is it possible under Section 5 that the city council complete would also be complete in the assembly? Is it quite possible?

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<sup>n25</sup>The dialog was also relevant in terms of original Article X, Section 4 of Alaska's constitution which provided in relevant part that:

Each city of the first class, and each city of any other class designated by law, shall be represented on the assembly by one or more members of its council. The other members of the assembly shall be elected from and by the qualified voters resident outside such cities.

The provision was repealed in 1972."



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V. FISCHER: I think that would be possible only if the borough was the same size as the city, or if the legislature provided that the people outside of the city shall have no representation.

GRAY: It could be so?

V. FISCHER: I could not imagine it happening.

#### **F. Article X, Section 12**

The twelfth section of the Local Government Article of Alaska's Constitution deals with setting of boundaries. It provides as follows:

**Article X, Section 12. Boundaries.** A local boundary commission or board shall be established by law in the executive branch of the state government. The commission or board may consider any proposed local government boundary change. It may present proposed changes to the legislature during the first ten days of any regular session. The change shall become effective forty-five days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house. The commission or board, subject to law, may establish procedures whereby boundaries may be adjusted by local action.

The framers of Alaska's Constitution subscribed to the principle that, "unless a grave need existed, no agency, department, commission, or other body should be specified in the constitution." (*Alaska's Constitutional Convention*, p. 124.) Of the 120 or so active State boards and commissions, only the Local Boundary Commission and four others have origins in the Constitution.<sup>20</sup> Additionally, one State agency is specified in the Constitution.<sup>21</sup>

It is worth reflecting that of the six boards, commissions, and agencies specified in Alaska's Constitution, two deal with the judicial branch, one deals with the legislative branch, one deals with the University of Alaska, and two – the Local Boundary Commission and the local government agency – deal with local governments. The prominence that the framers of Alaska's Constitution gave to the LBC and the local government agency reflects their strong conviction that successful implementation of the local government principles laid out in the Constitution was dependent, in large part, upon those two entities.

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<sup>20</sup>The other four are the (legislative) Redistricting Board, Judicial Council, Commission on Judicial Conduct, and the University Board of Regents.

<sup>21</sup>Article X, Section 14 of the Constitution provides that, "An agency shall be established by law in the executive branch of the state government to advise and assist local governments. It shall review their activities, collect and publish local government information, and perform other duties prescribed by law."

Article X, Section 12 of Alaska's Constitution provides for the establishment of the Local Boundary Commission. The Alaska Supreme Court observed that the LBC was created to serve as an impartial body to review, from a statewide perspective, proposals relating to the establishment and alteration of municipal governments. Specifically, the Court stated:

An examination of the relevant minutes of [the Local Government Committee of the Constitutional Convention] shows clearly the concept that was in mind when the local boundary commission section was being considered: that local political decisions do not usually create proper boundaries and that boundaries should be established at the state level. The advantage of the method proposed, in the words of the committee:

. . . lies in placing the process at a level where area-wide or state-wide needs can be taken into account. By placing authority in this third party, arguments for and against boundary change can be analyzed objectively.

*Fairview Public Utility District No. 1 v. City of Anchorage*, 368 P.2d 540, 543 (Alaska 1962).

The LBC acts on proposals for seven different types of municipal boundary change. These are:

1. incorporation of municipalities;<sup>22</sup>
2. reclassification of city governments;
3. annexation to municipalities;
4. dissolution of municipalities;
5. detachment from municipalities;
6. merger of municipalities; and
7. consolidation of municipalities.

In addition to the above, the LBC has a continuing obligation under statutory law to:

- make studies of local government boundary problems;
- adopt regulations providing standards and procedures for municipal incorporation, annexation, detachment, merger, consolidation, reclassification, and dissolution; and
- make recommendations to the Legislature concerning boundary changes under Article X, Section 12 of Alaska's constitution.

Further, the LBC is routinely assigned duties by the Legislature; e.g., the 2002 requirement to study the unorganized borough and determine which areas meet borough in

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<sup>22</sup>The term "municipalities" includes both city governments and borough governments.

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corporation standards and the 2003 directive to work with the Department of Education and Early Development regarding school district consolidation.

**G. Article X, Section 13**

The thirteenth section of the Local Government Article of Alaska's Constitution deals with cities. It provides as follows:

**Article X, Section 13. Agreements; Transfer of Powers.** Agreements, including those for cooperative or joint administration of any functions or powers, may be made by any local government with any other local government, with the State, or with the United States, unless otherwise provided by law or charter. A city may transfer to the borough in which it is located any of its powers or functions unless prohibited by law or charter, and may in like manner revoke the transfer.

The Commission cited Section 13 in Skagway (*at 17*) as the last provision in the Local Government Article of Alaska's Constitution as which makes a distinction between a city government and borough government. The LBC stated as follows:

Finally, Article X, Section 13 authorizes cities to transfer, and revoke transfer of city power and functions to the borough in which it is located. There is no similar constitutional provision for transfer of borough powers and duties to cities. This asymmetry is consistent with the notion that boroughs would have broader jurisdiction than cities.

### **III. STATUTORY STANDARDS**

The standards in State statutes that apply to a borough detachment proposal are stated in part III-A. Those that apply to a borough incorporation proposal are stated in part III-B.

**A. Borough Detachment Standards**

The only statutory standards relating to borough detachment are found in AS 29.06.040(a), which were cited at the beginning of this publication. That statutory provision states:

The Local Boundary Commission may consider any proposed municipal boundary change. The commission may amend the proposed change and may impose conditions on the proposed change. If the commission determines that the proposed change, as amended or conditioned if appropriate, meets applicable standards under the state constitution and commission regulations and is in the best interests of the state, it may accept the proposed change. Otherwise it shall reject the proposed change. A Local Boundary Commission decision under this subsection may be appealed under AS 44.62 (Administrative Procedure Act).

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**B. Borough Incorporation Standards**

AS 29.05.031 establishes statutory standards for incorporation of a borough. It provides as follows:

(a) An area that meets the following standards may incorporate as a home rule, first class, or second class borough, or as a unified municipality:

(1) the population of the area is interrelated and integrated as to its social, cultural, and economic activities, and is large and stable enough to support borough government;

(2) the boundaries of the proposed borough or unified municipality conform generally to natural geography and include all areas necessary for full development of municipal services;

(3) the economy of the area includes the human and financial resources capable of providing municipal services; evaluation of an area's economy includes land use, property values, total economic base, total personal income, resource and commercial development, anticipated functions, expenses, and income of the proposed borough or unified municipality;

(4) land, water, and air transportation facilities allow the communication and exchange necessary for the development of integrated borough government.

(b) An area may not incorporate as a third class borough.

**IV. STANDARDS IN LBC REGULATIONS**

The standards in regulations adopted by the LBC that apply to a borough detachment proposal are stated in part IV-A. Those that apply to a borough incorporation proposal are stated in part IV-B.

**A. Borough Detachment Standards**

Provisions in 3 AAC 110.270, 3 AAC 110.900, 3 AAC 110.910, 3 AAC 110.970, and 3 AAC 110.980 are applicable to a borough detachment proposal. Those provisions are stated below:

**1. 3 AAC 110.270. Best interests of state**

(a) In determining whether detachment from a borough is in the best interests of the state under AS 29.06.040, the commission may consider relevant factors, including

(1) the health, safety, and general welfare of the proposed remnant borough and the territory after detachment;

(2) the ability of the proposed remnant borough to efficiently and effectively provide reasonably necessary facilities and services after detachment;

(3) the reasonably anticipated potential for, and impact of, future population growth or economic development that will require local government regulation in the territory after detachment;

(4) the historical pattern of providing to the territory municipal services that have been, or should be, supported by tax levies in the territory;

(5) the historical pattern of cooperation and shared commitment between the people of the proposed remnant borough and the people of the territory;

(6) the extent to which detachment might enhance or diminish the ability of the proposed remnant borough to meet the standards for incorporation of boroughs, as set out in the Constitution of the State of Alaska, AS 29.05, and 3 AAC 110.045 - 3 AAC 110.065;

(7) the extent to which a transition plan of a previous annexation has been implemented and is effective;

(8) the effect of the proposed detachment on the long-term stability of the finances of the proposed remnant borough, other municipalities, and the state;

(9) whether the proposed detachment will promote local self-government with a minimum number of governmental units; and

(10) whether the territory's requirements for local government services will be adequately met following detachment.

(b) If, to fulfill the requirements of (a)(10) of this section, petitioners have proposed, or the commission requires, incorporation of the territory into a new municipality, the commission will condition the approval of the detachment upon voter approval of the incorporation.

(c) Absent a specific and persuasive showing to the contrary, the commission will presume that territory proposed for detachment that would create non-contiguous parts of the city or enclaves within the city does not meet the standards for detachment.

(d) Absent a specific and persuasive showing to the contrary, the commission will presume that territory proposed for detachment from an organized borough to an unorganized borough is a diminution of local self-government and does not meet the standards for detachment.

**2. 3 AAC 110.900. Transition**

(a) A petition for incorporation, annexation, merger, or consolidation must include a practical plan that demonstrates the capacity of the municipal government to extend essential city or essential borough services into the territory proposed for change in the shortest practicable time after the effective date of the proposed change. A petition for city reclassification under AS 29.04, or municipal detachment or dissolution under AS 29.06, must include a practical plan demonstrating the transition or termination of municipal services in the shortest practicable time after city reclassification, detachment, or dissolution.

(b) Each petition must include a practical plan for the assumption of all relevant and appropriate powers, duties, rights, and functions presently exercised by an existing borough, city, unorganized borough service area, and other appropriate entity located in the territory proposed for change. The plan must be prepared in consultation with the officials of each existing borough, city and unorganized borough service area, and must be designed to effect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the effective date of the proposed change.

(c) Each petition must include a practical plan for the transfer and integration of all relevant and appropriate assets and liabilities of an existing borough, city, unorganized borough service area, and other entity located in the territory proposed for change. The plan must be prepared in consultation with the officials of each existing borough, city, and unorganized borough service area wholly or partially included in the area proposed for the change, and must be designed to effect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the date of the proposed change. The plan must specifically address procedures that ensure that the transfer and integration occur without loss of value in assets, loss of credit reputation, or a reduced bond rating for liabilities.

(d) Before approving a proposed change, the commission may require that all boroughs, cities, unorganized borough service areas, or other entities wholly or partially included in the area of the proposed change execute an agreement prescribed or approved by the commission for the assumption of powers, duties, rights, and functions, and for the transfer and integration of assets and liabilities.

**3. 3 AAC 110.910. Statement of non-discrimination**

A petition will not be approved by the commission if the effect of the proposed change denies any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin.

**4. 3 AAC 110.970. Determination of essential city or borough services**

(a) If a provision of this chapter provides for the identification of essential borough services, the commission will determine those services to consist of those mandatory and discretionary powers and facilities that, as determined by the commission,

(1) are reasonably necessary to the territory; and

(2) cannot be provided more efficiently and more effectively

(A) through some other agency, political subdivision of the state, regional educational attendance area, or coastal resource service area; or

(B) by the creation or modification of some other political subdivision of the state, regional educational attendance area, or coastal resource service area.

(b) The commission may determine essential borough services to include

(1) assessing and collecting taxes;

(2) providing primary and secondary education;

(3) planning, platting, and land use regulation; and

(4) other services that the commission considers reasonably necessary to meet the borough governmental needs of the territory.

(c) If a provision of this chapter provides for the identification of essential city services, the commission will determine those services to consist of those mandatory and discretionary powers and facilities that, as determined by the commission,

(1) are reasonably necessary to the community; and

(2) cannot be provided more efficiently and more effectively

(A) through some other agency, political subdivision of the state, regional educational attendance area, or coastal resource service area; or

(B) by the creation or modification of some other political subdivision of the state, regional educational attendance area, or coastal resource service area.

(d) The commission may determine essential city services to include

- (1) levying taxes;
- (2) for a city in the unorganized borough, assessing and collecting taxes;
- (3) for a first class or home rule city in the unorganized borough, providing primary and secondary education in the city;
- (4) public safety protection;
- (5) planning, platting, and land use regulation; and
- (6) other services that the commission considers reasonably necessary to meet the local governmental needs of the community.

**5. 3 AAC 110.980. Determination of best interests of the state**

If a provision of AS 29 or this chapter requires the commission to determine whether a proposed municipal boundary change or other commission action is in the best interests of the state, the commission will make that determination on a case-by-case basis, in accordance with applicable provisions of the Constitution of the State of Alaska, AS 29.04, AS 29.05, AS 29.06, and this chapter, and based on a review of

- (1) the broad policy benefit to the public statewide; and
- (2) whether the municipal government boundaries that are developed serve
  - (A) the balanced interests of citizens in the area proposed for change;
  - (B) affected local governments; and
  - (C) other public interests that the commission considers relevant.

**B. Borough Incorporation Standards**

Provisions in 3 AAC 110.045, 3 AAC 110.050, 3 AAC 110.055, 3 AAC 110.060, 3 AAC 110.065, 3 AAC 110.900, 3 AAC 110.910, 3 AAC 110.920, 3 AAC 110.970, and 3 AAC 110.980 are applicable to a borough proposal. The provisions of 3 AAC 110.900, 3 AAC 110.910, 3 AAC 110.970, and 3 AAC 110.980 were stated under part IV-A and are not repeated here. The provisions of 3 AAC 110.045, 3 AAC 110.050, 3 AAC 110.055, 3 AAC 110.060, 3 AAC 110.065, 3 AAC 110.920 are stated below.



**1. 3 AAC 110.045. Community of interests.**

(a) The social, cultural, and economic characteristics and activities of the people in a proposed borough must be interrelated and integrated. In this regard, the commission may consider relevant factors, including the

(1) compatibility of urban and rural areas within the proposed borough;

(2) compatibility of economic lifestyles, and industrial or commercial activities;

(3) existence throughout the proposed borough of customary and simple transportation and communication patterns; and

(4) extent and accommodation of spoken language differences throughout the proposed borough.

(b) Absent a specific and persuasive showing to the contrary, the commission will presume that a sufficient level of interrelationship cannot exist unless there are at least two communities in the proposed borough.

(c) The communications media and the land, water, and air transportation facilities throughout the proposed borough must allow for the level of communications and exchange necessary to develop an integrated borough government. In this regard, the commission may consider relevant factors, including

(1) transportation schedules and costs;

(2) geographical and climatic impediments;

(3) telephonic and teleconferencing facilities; and

(4) electronic media for use by the public.

(d) Absent a specific and persuasive showing to the contrary, the commission will presume that communications and exchange patterns are insufficient unless all communities within a proposed borough are connected to the seat of the proposed borough by a public roadway, regular scheduled airline flights on at least a weekly basis, regular ferry service on at least a weekly basis, a charter flight service based in the proposed borough, or sufficient electronic media communications.

**2. 3 AAC 110.050. Population.**

(a) The population of a proposed borough must be sufficiently large and stable to support the proposed borough government. In this regard, the commission may consider relevant factors, including

- (1) total census enumerations;
- (2) durations of residency;
- (3) historical population patterns;
- (4) seasonal population changes; and
- (5) age distributions.

(b) Absent a specific and persuasive showing to the contrary, the commission will presume that the population is not large enough and stable enough to support the proposed borough government unless at least 1,000 permanent residents live in the proposed borough.

**3. 3 AAC 110.055. Resources.**

The economy of a proposed borough must include the human and financial resources necessary to provide essential borough services on an efficient, cost-effective level. In this regard, the commission

- (1) will consider
  - (A) the reasonably anticipated functions of the proposed borough;
  - (B) the reasonably anticipated expenses of the proposed borough;
  - (C) the ability of the proposed borough to generate and collect local revenue, and the reasonably anticipated income of the proposed borough;
  - (D) the feasibility and plausibility of the anticipated operating and capital budgets through the third full fiscal year of operation;
  - (E) the economic base of the proposed borough;
  - (F) property valuations for the proposed borough;
  - (G) land use for the proposed borough;

(H) existing and reasonably anticipated industrial, commercial, and resource development for the proposed borough; and

(I) personal income of residents of the proposed borough; and

(2) may consider other relevant factors, including

(A) the need for and availability of employable skilled and unskilled persons to serve the proposed borough; and

(B) a reasonably predictable level of commitment and interest of the population in sustaining a borough government.

**4. 3 AAC 110.060. Boundaries.**

(a) The boundaries of a proposed borough must conform generally to natural geography, and must include all land and water necessary to provide the full development of essential borough services on an efficient, cost-effective level. In this regard, the commission may consider relevant factors, including

(1) land use and ownership patterns;

(2) ethnicity and cultures;

(3) population density patterns;

(4) existing and reasonably anticipated transportation patterns and facilities;

(5) natural geographical features and environmental factors; and

(6) extraterritorial powers of boroughs.

(b) Absent a specific and persuasive showing to the contrary, the commission will not approve a proposed borough with boundaries extending beyond any model borough boundaries.

(c) The proposed borough boundaries must conform to existing regional educational attendance area boundaries unless the commission determines, after consultation with the commissioner of education and early development, that a territory of different size is better suited to the public interest in a full balance of the standards for incorporation of a borough.

(d) Absent a specific and persuasive showing to the contrary, the commission will presume that territory proposed for incorporation that is non-contiguous or that contains enclaves does not include all land and water necessary to allow for the full development of essential borough services on an efficient, cost-effective level.

(e) If a petition for incorporation of a proposed borough describes boundaries overlapping the boundaries of an existing organized borough, the petition for incorporation must also address and comply with all standards and procedures for detachment of the overlapping region from the existing organized borough. The commission will consider and treat that petition for incorporation as also being a detachment petition.

**5. 3 AAC 110.065. Best interests of state.**

In determining whether incorporation of a borough is in the best interests of the state under AS 29.05.100 (a), the commission may consider relevant factors, including whether incorporation

(1) promotes maximum local self-government;

(2) promotes a minimum number of local government units;

(3) will relieve the state government of the responsibility of providing local services; and

(4) is reasonably likely to expose the state government to unusual and substantial risks as the prospective successor to the borough in the event of the borough's dissolution.

**6. 3 AAC 110.900. Transition.**

Part IV-A-2 of this publication states the regulation in full.

**7. 3 AAC 110.910. Statement of non-discrimination.**

Part IV-A-3 of this publication states the regulation in full.

**8. 3 AAC 110.920. Determination of community.**

(a) In determining whether a settlement comprises a community, the commission may consider relevant factors, including whether the

(1) settlement is inhabited by at least 25 individuals;

(2) inhabitants reside permanently in a close geographical proximity that allows frequent personal contacts and comprise a population density that is characteristic of neighborhood living; and

(3) inhabitants residing permanently at a location are a discrete and identifiable social unit, as indicated by such factors as school enrollment, number of sources of employment, voter registration, precinct boundaries, permanency of dwelling units, and the number of commercial establishments and other service centers.

(b) Absent a specific and persuasive showing to the contrary, the commission will presume that a population does not constitute a community if

(1) public access to or the right to reside at the location of the population is restricted;

(2) the population is adjacent to a community and is dependent upon that community for its existence; or

(3) the location of the population is provided by an employer and is occupied as a condition of employment primarily by persons who do not consider the place to be their permanent residence.

**9. 3 AAC 110.970. Determination of essential city or borough services.**

Part IV-A-4 of this publication states the regulation in full.

**10. 3 AAC 110.980. Determination of best interests of the state.**

Part IV-A-5 of this publication states the regulation in full.

